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No. 10-414

Supreme Court U.S.
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In The

Supreme Court of the United States

NELDON JOHNSON,

Petitioner,

v.

INA JOHNSON,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Utah

BRIEF IN OPPOSITION OF RESPONDENT

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATEMENT OF JURISDICTION	1
STATEMENT OF THE CASE	2
A. Nature of the Underlying Dispute in State Court	2
B. Course of Proceedings in the Utah State District Court	3
C. Underlying Facts	9
ARGUMENT	13
I. The Consistency of a Decision of the Utah Supreme Court with a Utah Statute or State Constitution does not Provide a Basis for this Court to Exercise Jurisdiction	15
II. The Utah Supreme Court's Decision has no Effect on the Jurisdiction of Federal Courts to Hear Divorce Actions	20
III. State High Courts Cannot Enhance Federal Diversity Jurisdiction	23
IV. The Decision in *Johnson* does not Contravene Public Policy or Conflict with the Defense of Marriage Act or Article IV of the U.S. Constitution	24
CONCLUSION	31

TABLE OF AUTHORITIES

Page

CASES

Ankenbrandt v. Richards, 504 U.S. 687 (1992) 22, 24

Caffall v. Caffall, 303 P.2d 286 (Utah 1956).....*passim*

Denman v. Leedy, 479 F.2d 1097 (6th Cir. 1973).....23

Dep't of Social Services v. Vijil, 784 P.2d 1130 (Utah 1989) 8

Gargallo v. Gargallo, 472 F.2d 1219 (6th Cir.), *cert. denied*, 414 U.S. 805 (1973).....23

Gray v. Richardson, 474 F.2d 1370 (6th Cir. 1973).....23

Johnson v. Johnson, 2010 UT 28, 234 P.3d 1100 (2010).....*passim*

Johnson v. Ventling, 132 S.W.3d 173 (Tex. App. 2004).....19, 20

Levy v. Superior Court of San Francisco, 167 U.S. 175 (1897).....16

Marshall v. Marshall, 547 U.S. 293 (2006) 24

McCarty v. McCarty, 453 U.S. 210 (1981).....22

Miller v. Cornwall R. Co., 168 U.S. 131 (1897) 16

Perry v. McLaughlin, 754 P.2d 679 (Utah Ct. App. 1988) 19

Popovoci v. Agler, 280 U.S. 379 (1930).....22

Salomons v. Graham, 82 U.S. 208 (1872).....16

Van Der Stappen v. Van Der Stappen, 815 P.2d 1335 (Utah Ct. App. 1991).....8, 9

TABLE OF AUTHORITIES – Continued

Page

Withers v. Buckley, 61 U.S. 84 (1858).....16

Yuk Shau Mui v. Wing, 822 F.2d 1089 (1987).....22

CONSTITUTIONS, STATUTES, AND RULES

U.S. Const. Art. IV, §1 29

28 U.S.C. §1257(a) (2010).....1, 15

28 U.S.C. §1332 (2010) 21

28 U.S.C. §1738C 30

U.C.A. §30-1-1 *et seq*.....29

U.C.A. §30-1-4.5 (1987) 26, 27, 28

U.C.A. §30-3-1 (2010) 25

U.C.A. §78-5-102(1) (2010).....25

Sup. Ct. R. 10.....1, 10

Utah R. Civ. P. 60(b) 3, 12

STATEMENT OF JURISDICTION

In order to establish jurisdiction in this case, Petitioner must meet the requirements of 28 U.S.C. §1257(a) which provides:

> (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

The requirements to establish a basis for certiorari are mirrored in Sup. Ct. R. 10 which, in relevant part, states:

> Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

The Petition filed in this case, fails on its face, to establish that the Utah Supreme Court either decided an issue even tangentially related to federal law or that the cited decision violates the full faith and credit clause of the U.S. Constitution and the Defense of Marriage Act.

STATEMENT OF THE CASE

A. Nature of the Underlying Dispute in State Court.

The Petitioner and Respondent were divorced by Findings of Fact, Conclusions of Law and a Decree entered on June 6, 2001, by a Utah State District Court judge (Citation to the Record on Appeal before the Utah Supreme Court, R. 305-10). An Amended

Decree were entered on June 27, 2001 (R. 311-326). Six years after the entry of the Amended Decree and after he had repeatedly been found to have violated the terms of the Amended Decree, the Petitioner filed a motion in the district court in Utah, pursuant to Rule 60(b) of the Utah Rules of Civil Procedure, seeking to have the court vacate the decree of divorce entered six years earlier. The basis of the motion was the Petitioner's sudden recollection that he and the Respondent were not really married in the first place as alleged in all the material pleadings and therefore, the district court did not have subject matter jurisdiction under Utah statute to enter a decree of divorce. The appeal to the Utah Supreme Court, from which the Petition in this case follows, was based upon the Utah district court's denial of the Rule 60(b) Motion to Vacate Decree and Amended Decree of Divorce and Motion to Dismiss (R. 2093-2098).

B. Course of Proceedings in the Utah State District Court.

After the entry of the Amended Decree, the Petitioner used every conceivable mechanism, in and out of court, to interfere with the Respondent's efforts to obtain her share of the marital assets. Included in his efforts was an earlier appeal of the matter to the Utah Court of Appeals. In its decision, entered on August 9, 2007, the Utah Court of Appeals upheld the decision of the trial court, as set out in the Order of January 23, 2006, to use contempt proceedings to try and remedy the Appellant's failure to make payments

as ordered in the Amended Decree. The decision also upheld the award of attorney fees at the trial court level to the Appellee and further granted her attorney fees on appeal. *Johnson v. Johnson,* 2010 UT 28, 234 P.3d 1100 (2010) (R. 1878-1882).

In a continuing effort to thwart the Respondent's effort to locate and retrieve her share of the marital property, which process went on for years, the Petitioner, on September 18, 2007, more than six years after the entry of the Amended Decree, filed a Motion to Vacate the Amended Decree of Divorce and to Dismiss the Action (R. 1884-1913). It is the Utah Supreme Court's review of the disposition of this motion, that the Petition in this case addresses.

The district court judge denied the Petitioner's motion on February 29, 2008 (R. 2092-2098). In relevant part, the Order denying the Appellant's motion to vacate the Amended Decree provides:

> 1. The Court finds that Respondent claims that the trial court did not have subject matter because the parties were never actually married.
>
> 2. The Court finds that the fact pattern in this case is not in dispute and finds that both parties admit that the parties held themselves out as being married for over 37 years, but had never actually been married. The Court finds that the Petitioner filed a Complaint for Divorce, claiming that the parties were married. The Court finds that the

Respondent admitted that the parties were married and finds that neither party ever adopted any other position until the Respondent filed the Motion to Vacate now before the Court, claiming that the parties never were married.

. . .

5. The Court finds that the Respondent has maintained the position that he was legally married to the Petitioner through the entire litigation process, until the Motion was filed on October 19, 2007 and finds that the parties held themselves out as husband and wife for nearly thirty seven years, before the Decree of Divorce was granted in this matter.

6. The Court finds that the Petitioner relied on the fact that the Respondent has held himself out as being married to the Petitioner, to her detriment. The Court finds that the Petitioner filed for divorce in the year 2000 and finds that eight years later, long after the Decree of Divorce had been granted, the Respondent filed the instant Motion.

7. The Court finds that had the Respondent filed documents claiming the parties were never married at the initiation of the case, that the Petitioner could have amended her pleadings to establish a common law marriage and would have realized the same results and outcome as are set forth in the parties Amended Decree of Divorce. The Court finds that the matter was never heard

by the trial court, but was initially resolved by a mutual stipulation.

. . .

9. The Court finds that an examination of the Court file in this matter demonstrates that the Respondent has a long history of acting in bad faith and further finds that this most recent Motion is yet another attempt to avoid the Respondent's financial obligations to the Petitioner, as set forth in the parties' Amended Decree of Divorce.

10. The Court finds that the elements of the *Caffall v. Caffall*, case have been met and finds that, as in *Caffall*, the Respondent/ Neldon Johnson acquiesced to the divorce by entering into a stipulated agreement, which resulted in the entrance of the Amended Decree of Divorce, despite knowing that the parties were not married. The Court finds that, as in *Caffall*, there was a very long delay between the entry of the Amended Decree and the Respondent's Motion to set the Decree aside, which was a period of time from June 27, 2001 to October 19, 2007, which is over six years. The Court finds that Neldon Johnson filed the instant Motion to Vacate as an effort to avoid complying with the terms and obligations of the Respondent, set forth in the Amended Decree of Divorce.

11. The Court finds that the Motion to Vacate Decree of Divorce and Amended Decree of Divorce and Motion to Dismiss for Want of Subject Matter Jurisdiction filed by Neldon

> Johnson was another attempt to avoid the terms of the Decree of Divorce that required him to pay sums due and owing to the Petitioner. The Court finds that Neldon Johnson acts, when taken altogether, constitute bad faith.
>
> 12. For all the foregoing reasons, the Court finds that the Respondent's Motion to Vacate Decree of Divorce and Amended Decree of Divorce and Motion to Dismiss for Want of Subject Matter Jurisdiction should be denied because the Respondent is estopped from attacking the Amended Decree, despite any lack of subject matter jurisdiction.
>
> 13. The Motion to Vacate Decree of Divorce and Amended Decree of Divorce and Motion to Dismiss for Want of Subject Matter Jurisdiction is hereby denied.

R. 2092-2098, *see* Order Denying Motion, Appendix B.

The Petitioner appealed from the Utah district court order to the Utah Supreme Court, who rendered its decision affirming the denial of the Petitioner's motion, in *Johnson v. Johnson,* 2010 UT 28, 234 P.3d 1100 (2010). Declining to affirm the denial of Petitioner's motion on the basis of judicial estoppel, the doctrine employed by the district court, the Utah Supreme Court used the occasion to hone the definition of "subject matter jurisdiction." In doing so, the Utah Supreme Court reversed its earlier decision in *Caffall v. Caffall,* 303 P.2d 286 (Utah 1956), where

they held that a district court lacks subject matter jurisdiction to adjudicate a divorce if no underlying marriage exists.

In its decision, the Utah Supreme Court embraced the comments of the Utah Court of Appeals in *Van Der Stappen v. Van Der Stappen*, 815 P.2d 1335, 1339 n.5 (Utah Ct. App. 1991) (quoting *Dep't of Social Servs. v. Vijil*, 784 P.2d 1130, 1132 (Utah 1989)) that the *Caffall* holding was "inconsistent with the generally announced and fundamental legal proposition that 'subject matter jurisdiction is the authority and competency of the court to decide the case,' without which, the court may not validly act." The appellate court noted that unlike cases where a party has not exhausted its administrative remedies or has failed to comply with statutory prerequisites to suit, "[t]he discovery that the parties never had a valid marriage [does] not . . . divest the court of its authority to resolve the dispute between them." *Id.* at 1339 n.8.

The Utah Supreme Court, agreeing with the reasoning in *Van Der Stappen*, held that the holding in *Caffall* "unnecessarily blurred the distinction between a mistake as to the exact nature of the subject matter in dispute and the court's ultimate authority and competence to decide the dispute." *Id.* The court held that just as a court adjudicating a contract dispute has the authority to determine that no contract exists without losing subject matter jurisdiction over the dispute, a court has the authority to adjudicate a divorce claim even if the court later

determines that no marriage ever existed. *Id.* Simply, Utah courts will not invalidate a divorce decree on the grounds that the "right involved in the suit did not embrace the relief granted." *Id.*

There is simply nothing in the holding of the Utah Supreme Court that violates federal law, comments on federal court jurisdiction, or, is contrary to the Defense of Marriage Act. In fact, the holding brings Utah's law in conformity with the established law across the country.

C. Underlying Facts.

The Respondent, when she filed for divorce against the Petitioner in the district court of Utah alleged in paragraph two of her complaint that "[t]he parties are husband and wife, having been married on May 3, 1964 in Arizona" (R. 4). In the first order to show cause it was alleged in paragraph three that the parties were married on May 3, 1964 and that they had been married for thirty-six years (R. 13). In the Petitioner's Answer to the Complaint, he admitted the allegations contained in paragraph two of the Complaint (R. 44). Throughout the Petitioner's own affidavit for an order to show cause filed on August 18, 2000, he acknowledges that the parties had been husband and wife continuously (R. 45-47).

At no time from the filing of the Complaint on July 20, 2000 (R. 1-4) to the day that the Petitioner filed his motion to dismiss based upon subject matter jurisdiction, on September 18, 2007 (**a period of**

more than seven years), did either party dispute the fact that they had been formally married on the date set out in the complaint and had lived together as husband and wife thereafter. Neither party disputed that during the time they lived together from May 3, 1964, to the time the parties separated at the commencement of the divorce action, they had held themselves out as husband and wife to the community, held property as husband and wife, operated joint bank accounts, encouraged a general reputation in the community as being husband and wife; and significantly, filed joint federal and state tax returns avowing that they were legally married and thereby reaping the benefits of the "married" filing status. **During the entire course of proceedings, neither party denied that, at the time of the divorce, the parties had been married thirty-seven (37) years.**

The record in this divorce matter reflects that the matter was bifurcated to allow the parties to be divorced on June 6, 2001, before the substantive issues in their case were decided (R. 243-248, 307-310). An Amended Decree of Divorce was ultimately entered with appropriate findings, on June 27, 2001, which were to be effective as of May 29, 2001 (R. 311-326). Both parties were represented by counsel during the proceeding and the Amended Decree was the product of a Stipulation recited on the record and accepted by both parties and their attorneys.

In summary, the Amended Findings of Fact, Conclusions of Law and Amended Decree awarded

the Petitioner the family home and miscellaneous cash. The Respondent was awarded the major asset of the marriage, eight million shares of International Automated Systems, also known as "U-Check." To balance the equation and compensate for the waiver of alimony, the Respondent was awarded $2,800,000, that the Petitioner was to pay, in monthly payments, commencing, July 1, 2001, in the sum of $8,333.33. The Respondent's interest was to be secured by a trust deed and trust deed note in certain real property and assets.

There is no question that after the Amended Decree of Divorce was entered on June 27, 2001, no Rule 50, 59 or 60 motions were made by the Petitioner challenging the status of the parties as husband and wife. At no time during the divorce proceedings or thereafter, to the date the Petitioner filed his motion on September 18, 2007, did the Petitioner disavow his representations to the Utah district court, to the community, to state and federal tax agencies, that he and the Respondent were "married" as carefully established in the pleadings invoking the district court's jurisdiction.

The facts of this case reveal that the Petitioner, who is an intelligent, well-educated business man, filed the motion to vacate and dismiss as another, in a long continuous line, of attempts to thwart the terms of the Amended Decree of Divorce, to which he stipulated. The Petitioner, as the record detailed below reveals, has been derelict in his duties under the Amended Decree from the time of its entry to the

present day. A snapshot of the Petitioner's conduct is detailed from the court record and docket as follows. In Findings of Fact and Order from the enforcement proceedings, signed on September 18, 2002 (R. 789-796), the court found that the Petitioner's testimony was not credible and in fact, "absurd" and "nonsensical." In Paragraph 8 of the same order, the trial court found that "**the [Petitioner] converted $22,500.00 of funds, that were intended by the Court to be paid to [Respondent] for his own use**." *Id.* (Emphasis added). The trial court found in Paragraph 9 of the Findings that "**the [Petitioner] willfully disobeyed the previous orders of the Court**." *Id.* Paragraph 10 states "**[t]hat the Court finds the [Petitioner] had the ability to obey the previous orders of the Court but failed to do so**." (Emphasis added). *Id.* In Paragraph 11, the trial court found the "**[Petitioner] is in contempt of Court, for his willful refusal to follow the orders of the Court**." (Emphasis added). *Id.*

In Paragraph 19 of the same order, the court found that the Petitioner had admitted that he, having the ability to do so, simply chose not to make the monthly payments to the Respondent. *Id.*

Every time the district court would enter an order allowing collection of the monies due the Respondent, the Petitioner would employ another diversionary tactic. For instance, the Petitioner filed a Motion to set Aside the Amended Decree under Rule 60(b)(4), claiming that the Amended Decree was void (R. 1076-1086). The Petitioner claimed that the

stipulated language in the Amended Decree was vague and ambiguous. *Id.* Importantly, the Petitioner made no claim regarding the legitimacy of the marriage of the parties. The Petitioner filed motions to disqualify judges and postpone hearing repeatedly (R. 1095-1100). During all the time it took to resolve these issues, the Petitioner failed to make **one single payment** under the Amended Decree.

When the Petitioner's motions were all denied, he filed motions to set aside and amend the orders and then appealed for the first time to the Utah Court of Appeals (R. 1103-1104, 1283-1285, 1308, 1705-1707, 1716-1717, 1943-1945). All issues were resolved in favor of the Respondent on appeal and she was granted attorney fees both at the trial court and appellate level (R. 1878-1882).

Unable to conceive any more arguments to avoid the obligations to which he stipulated, the Petitioner Appellant resorted to claiming that he did not know what he was doing when he represented to this Court that he was married on a specific day in 1964.

ARGUMENT

The Petitioner's entire argument is based upon a faulty premise that the Utah Supreme Court in *Johnson v. Johnson,* removed the jurisdictional prerequisite that the parties allege the existence of a marriage to invoke the jurisdiction of the court of general jurisdiction to grant a divorce. A simple

reading of the decision reveals that the Utah Supreme Court's ruling does nothing to amend, alter or replace the requirement of an allegation in the initial complaint that the parties are married. The decision does nothing to contravene the state statutes vesting jurisdiction in divorce matters with the district court of Utah, the court of general jurisdiction. There is not a single word in the decision that comments on federal jurisdiction or expands the right of federal courts to hear divorce or related cases in Utah.

The Utah Supreme Court, in its decision, simply refined the application of subject matter jurisdiction to divorce actions and in so doing, applied principles accepted and applied by state courts across the country.

In this case, the Petitioner and Respondent both attested to the trial court in Utah that they were husband and wife. The trial court granted the decree of divorce in this matter based upon the clear and unambiguous attestation by both parties that not only were the parties married, but that they had been married for thirty-six years. All the evidence supported the allegation. All financial accounts were joint accounts. The parties filed joint federal and state returns and held themselves out to the community to be married. The issue the Utah Supreme Court had to address related to the allegation made nearly seven years after the decree of divorce had been entered that the parties had never really been married. It was to that specific fact scenario that the court addressed subject matter jurisdiction. The court

held that just as a court adjudicating a contract dispute has the authority to determine that no contract exists without losing subject matter jurisdiction over the dispute, a court has the authority to adjudicate a divorce claim even if the court later determines that no marriage ever existed. *Johnson v. Johnson,* 2010 UT 28, 234 P.3d 1100 (2010). Simply, the Utah Supreme Court held that Utah courts will not invalidate a divorce decree on the grounds that the "right involved in the suit did not embrace the relief granted." *Id.*

I. The Consistency of a Decision of the Utah Supreme Court with a Utah Statute or State Constitution does not Provide a basis for this Court to Exercise Jurisdiction.

There is no dispute in this matter as to the jurisdictional allegations that the Petitioner must make and establish in order to provide a basis for this Court to grant the relief requested in the Petition. 28 U.S.C. §1257(a) (2010) requires that the subject state court decision 1) relate to the validity of a treaty or statute of the United States; or, 2) relate to a statute of any State that is alleged to be repugnant to the Constitution, treaties, or laws of the United States; or, 3) involve any title, right, privilege, or immunity [ ] specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

Sup. Ct. R. 10 contains a description of the general character of the basis of a petition that would invoke review on a writ of certiorari. They include allegations that,

> . . .
>
> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. . . .

In Point I of the Petition, it is alleged that the Utah Supreme Court decision, in *Johnson*, is unconstitutional because it produces a result that is inconsistent with Utah's Constitution. Whether or not a decision by a state's highest court correctly interprets its own laws and statutes in light of the state constitution, is not a basis for a review by this Court. The law is clear that whether or not a state statute or decision violates the state's constitution simply did not confer jurisdiction on this Court. *Withers v. Buckley*, 61 U.S. 84 (1858); *Salomons v. Graham,* 82 U.S. 208 (1872); *Levy v. Superior Court of San Francisco,* 167 U.S. 175 (1897); *Miller v. Cornwall R. Co.*, 168 U.S. 131 (1897).

Respondent submits that is nothing in the *Johnson* decision that relates to a legitimate federal question or to federal statutes, treaties or other laws. In fact, at no time, did the Utah Supreme Court mention, interpret or construe **any** federal statutes related to marriage or divorce. The failure, in this first point, to relate the *Johnson* decision to inconsistency with the United States Constitution is a tacit admission of the lack of any suitable jurisdictional basis for this Court to review the matter.

In direct response to the allegation made repeatedly throughout the Petition, that the decision in *Johnson* somehow opens the floodgates to unmarried persons obtaining relief under the divorce statutes of Utah, it is necessary to accurately set out the precise holding of the Utah Supreme Court. By addressing the issue raised in the first point, the Respondent is not waiving her position that even if everything alleged in the first point of the Petition is true, it does not raise a basis upon which this Court could accept and review the Petition.

In the subject decision, the Utah Supreme Court held that it did not have to resort to judicial estoppel, as a basis to affirm the trial court's denial of the motion to set aside the divorce decree filed by the Petitioner. Instead, the court held that the Utah district court, indeed, had subject matter jurisdiction to grant the divorce and did not lose jurisdiction nearly seven years later when the decree was attached.

The Utah Supreme Court noted that except for a $25,000 court ordered penalty, Mr. Johnson has paid Ms. Johnson nothing of the $2,800,000, under the property settlement. Further, the court noted that Mr. Johnson had filed many challenges to the divorce decree since stipulating to it, all of which have been denied. All the challenges, the court found were made as collateral attacks to the divorce decree rather than appeals from it.

Importantly, the court noted that this was a case where the original jurisdiction of the court was properly invoked because both sides attested to the fact that they were married when the complaint was filed. Accordingly, there is nothing in the decision that mystically would allow parties who did not allege marriage, to gain access to the courts under the divorce statutes. In clear language, the court held:

> The original district court had the authority to determine whether Mr. and Mrs. Johnson met the statutory grounds for divorce and thus had subject matter jurisdiction over their divorce proceedings.

Id.

The Utah Supreme Court then expressly overruled their decision in *Caffall v. Caffall,* 303 P.2d 286, 288 (Utah 1956), where it determined that a court issuing a divorce decree for a marriage later found to be void did not have subject matter jurisdiction to do so because no marriage existed. The court held that

the reasoning in *Caffall* erroneously expanded the meaning of subject matter jurisdiction. *Id.*

The Court then launched into a discussion of subject matter jurisdiction and noted that subject matter jurisdiction is the authority of the court to decide the case. The court then acknowledged that pursuant to state statute, the district court has original jurisdiction in all civil matters not excepted in the Utah Constitution and not prohibited by law. From that logic, the court then, embracing language from an earlier case, held that "[w]here the court has jurisdiction over the class of case involved, judgment is not void on the ground that the right involved in the suit did not embrace the relief granted." *Id.* (*citing Perry v. McLaughlin,* 754 P.2d 679, 682 (Utah Ct. App. 1988)).

The court cited opinions from other jurisdictions that were consistent with its holding. The court referenced Texas courts that have held that "a divorce judgment, unappealed, and regular on its face, is not subject to a collateral attack in a subsequent suit." *Johnson v. Ventling,* 132 S.W.3d 173, 178 (App. 2004).

The court then held that unlike cases where a party has not exhausted its administrative remedies or has failed to comply with statutory prerequisites to suit, "the discovery that the parties never had a valid marriage [does] not . . . divest the court of its authority to resolve the dispute between them." *Id.* at 1339 n.8. The court then concluded that,

> Just as a court adjudicating a contract dispute has the authority to determine that no contract exists without losing subject matter jurisdiction over the dispute, a court has the authority to adjudicate a divorce claim even if the court later determines that no marriage ever existed. We therefore overrule our holding in *Caffall* and hold that because courts of general jurisdiction have the authority to adjudicate divorces, we will not invalidate a divorce decree on the grounds that the "right involved in the suit did not embrace the relief granted." [citing case].

Id.

As revealed by a reading of the case, the Utah Supreme Court has not rendered an opinion that is inconsistent with the underlying divorce statutes or Utah Constitution. More importantly, the Petitioner has failed to establish any relationship between the decision and federal law, statutes or significant federal questions.

II. The Utah Supreme Court's Decision has no Effect on the Jurisdiction of Federal Courts to Hear Divorce Actions.

In Point II of the Petition, the argument is made that the decision in *Johnson* eliminated the requirement of subject matter jurisdiction in order to render a decision in a divorce case and therefore has opened the gates for federal courts to hear divorce matters. As carefully set out in Point I, the decision did not, in

any respect, affect or alter the state constitutional and statutory exclusive delegation of divorce matters to Utah state court judges. The Utah Supreme Court did not undertake any reasoning that could possibly be construed to address the scope of federal jurisdiction. Any decision of a state court relating to jurisdiction could not possibly be construed as endowing federal courts with increased jurisdiction.

Federal courts do not base their jurisdiction on state law, state statutes or pronouncements. Even if a state court were to remove any and all jurisdictional prerequisites for the filing of a particular type of case, that would not affect the scope and breadth of federal jurisdiction. Jurisdiction in diversity cases is based upon federal statute. 28 U.S.C. §1332 provides in relevant part:

> (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between – (1) Citizens of different States; (2) citizens of a State and citizens or subjects of a foreign state; (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and (4) a foreign state, defined in section 1603(a) of this title. . . .

No state court decision could change the jurisdictional requirements for a diversity action or invest the federal court with additional subject matter jurisdictional province. Because the decision in *Johnson* did

not address in any regard the jurisdiction of federal courts or the interpretation of any related federal statute, this argument simply fails to provide a basis for this Court to accept the Petition filed in this case.

However, the issue of whether a federal court could hear a divorce matter has long been decided. This Court has recognized that diversity jurisdiction does not exist for domestic relations cases involving divorce, alimony, and child custody matters. *Ankenbrandt v. Richards*, 504 U.S. 689 (1992). *See also, McCarty v. McCarty*, 453 U.S. 210 (1981) (finding that domestic relations matters are the province of state law). This Court has specifically stated that federal courts have no jurisdiction over actions involving divorce because this area has been traditionally left to state courts and is an area in which state courts have developed expertise. *Ankenbrandt, supra*. The Court explained that divorce matters "not infrequently involve retention of jurisdiction by the court" and that state courts are in a better position to handle such matters. Additionally, the Supreme Court has found that the federal government has no power to regulate any aspect of domestic relations law. *Popovici v. Agler*, 280 U.S. 379 (1930). Only state courts have jurisdiction over domestic relations matters, and their jurisdiction is statutory in nature. *Yuk Shau Mui v. Wing*, 822 F.2d 1089 (1987).

Federal courts have been consistent in holding that although a domestic relations case may meet the technical requirements for diversity jurisdiction, federal courts refrain from exercising jurisdiction

over cases which in essence are domestic relations disputes. *Gray v. Richardson*, 474 F.2d 1370, 1373 (6th Cir. 1973); *Gargallo v. Gargallo*, 472 F.2d 1219, 1220 (6th Cir.), *cert. denied*, 414 U.S. 805, 94 S. Ct. 77, 38 L. Ed. 2d 41 (1973). Even when brought under the guise of a federal question action, a suit whose substance is domestic relations generally will not be entertained in a federal court. *Denman v. Leedy*, 479 F.2d 1097, 1098 (6th Cir. 1973).

The argument that the *Johnson* decision overtly or by implication affected federal jurisdiction over divorces in Utah, simply is not based upon any recognizable principle of law. The argument fails to fulfill any basis for jurisdiction to grant the Petition in this case.

III. State High Courts Cannot Enhance Federal Diversity jurisdiction.

Point III of the Petition makes a very curious argument. After setting out the extensive list of cases that have held that federal courts cannot and do not exercise diversity jurisdiction in domestic cases (which precedence is in direct contravention to the argument Petitioner makes in Point II that the *Johnson* decision will open the floodgates to divorce litigation in federal courts), Petitioner states that the *Johnson* case will provide a jurisdictional basis for federal courts to hear domestic cases. The argument is tantamount, again, to stating that a state court can

prescribe the scope and breadth of federal court jurisdiction in diversity or other cases.

The fact is that even if a state statute and a state high court decision purported to vest additional jurisdiction in a federal court, it would be a nullity. This Court in *Marshall v. Marshall,* 547 U.S. 293 (2006), could not be clearer. In affirming its ruling in *Ankenbrandt, supra,* this Court clearly stated once that "divorce, alimony, and child custody decrees" remain outside federal jurisdictional bounds. *Id.*

Federal courts are courts of limited jurisdiction and there is absolutely no law, federal or state, that holds that any state, by and through legislation or court decision, can invest or divest a federal court with jurisdiction. The argument of the Petitioner is once again baseless and does not provide a basis under the statute or this Court's rule to grant the Petition.

IV. The Decision in *Johnson* does not Contravene Public Policy or Conflict with the Defense of Marriage Act or Article IV of the U.S. Constitution.

In Point IV of the Petition, it is alleged that the decision in *Johnson* somehow violates public policy. The precise portion of the decision that the Petition attacks is that "[t]he district court has jurisdiction to determine the rights of parties who sue in divorce." *Johnson v. Johnson,* 2010 UT 28. Petition, page 17. The fact is that there is nothing in the cited language

that is new at all. As acknowledged by the Petitioner, the Utah statutes relating to divorce vest jurisdiction with the state district courts. U.C.A. §78-5-102(1) (2010) provides that "[t]he district court has original jurisdiction in all matters civil and criminal, not excepted in the Utah Constitution and not prohibited by law."

Importantly, the decision in *Johnson* does not change, alter or amend the clear statutory requirements relating to the filing of an action "in divorce." U.C.A. §30-3-1 (2010) states:

> (1) Proceedings in divorce are commenced and conducted as provided by law for proceedings in civil causes, except as provided in this chapter.
>
> (2) The court may decree a dissolution of the marriage contract between the petitioner and respondent on the grounds specified in Subsection (3) in all cases where the petitioner or respondent has been an actual and bona fide resident of this state and of the county where the action is brought, or if members of the armed forces of the United States who are not legal residents of this state, where the petitioner has been stationed in this state under military orders, for three months next prior to the commencement of the action.

After the decision in *Johnson*, every litigant filing a complaint in Utah district court "for divorce" has had to allege that they were bona fide residents

of the county in which they filed for a period of three months prior to the time of filing, that they were married to the other party and that there were grounds for divorce as required by the statute. The decision in *Johnson* has simply not affected, in any degree, the requirements set out above. The impact of *Johnson*, is that once the jurisdiction of the district court is properly invoked by the requisite representations that there is residency, a marriage and grounds, the district court will not be divested of jurisdiction as it is determined after the fact that there was no marriage.

It is hard to stand by and allow the Petitioner to address equity and public policy. The Petitioner is a man who has taken essentially all of the assets from a 36 year association for his own purposes and then, although clearly having the ability consisting of millions of dollars, has used the court system to avoid paying the Respondent her share of the estate. The monthly payment of $8,333.33 represents not only the Respondent's share of property, but her right to subsistence or alimony. The Petitioner has sat back, every month **for over nine years** and allowed the Respondent to scramble to meet monthly expenses while at the same time, trying to bring the Petitioner to justice.

There is another aspect that needs to be addressed in discussing public policy. U.C.A. §30-1-4.5 (1987), provided a mechanism for the Respondent to obtain the same relief that she obtained in the divorce, if the claim that there was no marriage had

been made during the initial proceeding. The statute recognized marriages not solemnized by formal proceedings. The statute states:

> (1) A marriage which is not solemnized according to this chapter shall be legal and valid if a court or administrative order establishes that it arises out of a contract between a man and a woman who: (a) are of legal age and capable of giving consent; (b) are legally capable of entering a solemnized marriage under the provisions of this chapter; (c) have cohabited; (d) mutually assume marital rights, duties, and obligations; and (e) who hold themselves out as and have acquired a uniform and general reputation as husband and wife.
>
> (2) The determination or establishment of a marriage under this section must occur during the relationship described in Subsection (1), or within one year following the termination of that relationship. Evidence of a marriage recognizable under this section may be manifested in any form, and may be proved under the same general rules of evidence as facts in other cases.

Id.

Had the Petitioner timely asserted his contention that the court did not have subject matter jurisdiction, the Respondent could have invoked the court's jurisdiction under this statute. Because the Petitioner's repudiation of his prior sworn representation that a marriage existed did not occur within

one year of the parties' separation and entry of the decree, the statutory version of "common law marriage" became unavailable to her. There is no question that the loss of the use of the statute provides proof of cataclysmic reliance on the Petitioner's representation in these proceedings. Further, it demonstrates once again that the Petitioner is only interested in trying to delay and impede the Respondent's efforts to collect what is rightfully hers.

The insidious nature of the Petitioner's tactic is clear. If allowed, it would form the basis for similar actions by other disgruntled parties to a "marriage." A party, knowing that there was a fundamental flaw with the marriage (divorce not finalized, marriage ceremony not official or other defect) could proceed through a divorce misrepresenting the existence of the marriage to the court; and then, if unhappy with the results, wait one year to allow the expiration of the remedies provided in U.C.A. §30-1-4.5, and move to set aside the decree based upon subject matter jurisdiction. The maneuver would deny a wronged party of the explicit remedy crafted by the statute to allow the establishment of a marriage without a formal ceremony.

In any event, there is simply nothing in *Johnson*, as claimed by Petitioner, that removes the requirement of alleging, upon the filing of a divorce complaint that the parties are married. Therefore the entire argument of the Petitioner in Point IV of the Petition fails.

The Petitioner's remaining arguments in Point IV of the Petition are so contrived and baseless that no response should be required. Petitioner argues that because no allegation of marriage is required to invoke the district court's jurisdiction to grant a divorce, under-age and same-sex associations (which are not "marriages" under Utah statute, U.C.A. §30-1-1 *et seq.*) would be awarded "divorces" that would have to be enforced by the Full Faith and Credit provisions of the United States Constitution. *See* U.S. Const., Art. IV, §1. Again, there is nothing in *Johnson* that would allow under-age, same-sex or other associations that are not marriages as defined by Utah Statutes to file a successful complaint for divorce. In order to invoke the district court's jurisdiction to grant a divorce, the parties would have to allege the jurisdictional prerequisites.

What the Petitioner is missing is the beauty of the remedy fashioned in this case by the Utah Supreme Court. If parties who alleged that they were married were found in the original proceedings not to have a legal marriage under Utah law, the district court would continue to exert jurisdiction, but grant only the relief to which the parties were entitled – partition, dissolution of partnership, etc. The district court would be free to review the common-law statute to see if the parties met the jurisdictional requirements for that relief. There is nothing in *Johnson* that would entitle parties who were proven not to be married in the original proceedings, to be given a

decree of divorce. As opposed to that hypothetical situation, the facts in this case establish that the trial court granted a divorce to two parties who swore that they were married. The decree was properly entered. The Utah Supreme Court simply stated that when one party then, nearly seven years later, attacks collaterally the decree, the original jurisdiction of the court will not be disturbed.

Finally, the Petitioner's only reference to a federal statute that could be impacted by *Johnson* is to the Defense of Marriage Act, 28 U.S.C. §1738C, which provides that,

> No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.

In order to make the statute relevant, one has to believe that *Johnson* removes the requirements for jurisdictional allegations in a divorce case and that the district court will have to grant divorce relief to anyone requesting it regardless of their status as partners, associates, couples, etc. Then, one has to believe that same-sex associations, who had obtained a divorce in Utah would try to enforce those

provisions in other states under Full Faith and Credit. Amazingly, even if all the above were true, which it is not, the Petitioner would still not be entitled to prevail.

The Defense of Marriage Act provides the receiving state a federal legislative mandate that it does not have to honor the bogus Utah decree. Petitioner argues that the misconstrued holding in *Johnson* is counter to the statute. Instead, the statute clearly provides protection for the state, who Petitioner argues will be burdened with having to enforce a same-sex decree that is not countenanced in that state. If parties went to a state where same-sex divorces were not recognized, the cited statute would be the means to avoid having to enforce the same.

Again, it is respectfully submitted that the Petitioner has utterly failed to establish an federal question cited in the jurisdictional statutes upon which this Court may exercise jurisdiction.

CONCLUSION

Based upon the foregoing, Respondent, Ina Johnson, respectfully submits that this Court decline to accept the Petition filed in this case on the basis

that the Petitioner has failed to provide a jurisdictional or compelling basis therefore.

Respectfully submitted,

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REPLY BRIEF

Supreme Court, U.S.
FILED
NOV 17 2010
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No. 10-414

IN THE
Supreme Court of the United States

NELDON JOHNSON,

Petitioner,

v.

INA JOHNSON,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the State of Utah

REPLY BRIEF OF PETITIONER ON PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF CITED AUTHORITIES ii

ARGUMENT 1

I. The Utah Supreme Court's ruling in *Johnson* contravenes DOMA because it allows parties to void or illegal "marriages" to receive benefits from federal entitlement programs, contrary to federal law. 2

II. The Utah Supreme Court's ruling in *Johnson* impacts federal diversity jurisdiction. 4

III. Respondent Ina Johnson's characterization of Petitioner's alleged behavior is extraneous, inappropriate, and irrelevant to this Petition. 7

CONCLUSION 9

TABLE OF CITED AUTHORITIES

CASES

Ankenbrandt v. Richards,
504 U.S. 687 (1992) 5

Carlsbad Technology, Inc. v. HIF Bio, Inc.,
___ U.S. ___, 129 S.Ct. 1862 (2009) 6

Johnson v. Johnson,
2010 UT 28, 234 P.3d 1100 ..... *passim*

Perry v. McLaughlin,
754 P.2d 679 (Utah App. 1988) 6

United States v. Morton,
467 U.S. 822 (1984) 6

CONSTITUTIONS, STATUTES, RULES

U.S. Const., Art. IV, § 1 3

28 U.S.C. § 1332 (2010) 6

28 U.S.C. § 1738C (2010) 3

OTHER CITATIONS

Black's Law Dictionary, 870 (8th ed. 2004) 6

ARGUMENT

This Court should grant certiorari to clarify the Utah Supreme Court's ruling in *Johnson v. Johnson*, 2010 UT 28, 234 P.3d 1100 (Utah 2010). Essentially, the *Johnson* decision allows a court to grant a divorce to those who have any form of domestic partnership arrangement, whether legal or illegal, recognized or unrecognized, because marriage is no longer required in Utah for a divorce.

Here, the parties and the Utah courts all agree on one thing: the Johnsons were never married. Respondent Ina Johnson alleged a marriage existed and Petitioner admitted to a marriage, but the parties were never married. The Utah Supreme Court that the district court had subject matter jurisdiction to grant a divorce when there was no marriage. After this decision, it is clear the only requirement to satisfy the marital element of jurisdiction in Utah (or possibly any other jurisdictional element) is an allegation of marriage. The allegation does not have to be true. It just has to be made.

Respondent Ina Johnson argues the Utah Supreme Court's decision has no effect on federal law or federal subject matter jurisdiction. She further argues the decision does not conflict with the DOMA or other federal law. However, Respondent Ina Johnson's argument is flawed and fails to recognize the expansive scope of the Utah Supreme Court's decision in *Johnson*.

The Utah Supreme Court's decision in *Johnson* contravenes federal law by implicating DOMA and

other federal benefit programs and requiring these programs to recognize illegal or void marriages. Further, the decision alters the scope of subject matter jurisdiction, limiting its application in the domestic arena and no longer requiring subject matter jurisdiction to obtain a divorce in Utah.

This Court should grant certiorari to clarify the Utah Supreme Court's decision and reconcile it with federal law.

I. The Utah Supreme Court's ruling in *Johnson* contravenes DOMA because it allows parties to void or illegal "marriages" to receive benefits from federal entitlement programs, contrary to federal law.

Respondent Ina Johnson argues "there is nothing in *Johnson* that would allow under-age, same-sex or other associations that are not marriages as defined by Utah Statutes to file a successful complaint for divorce." (*See* Brief in Opposition of Respondent, p. 29.) However, the decision in *Johnson* has that effect unless clarified. The Utah Supreme Court upheld a divorce between these parties when there was never a marriage, as required by statute. The *Johnson* decision is extremely broad, and paves the way for a broad line of decisions requiring other states to recognize Utah's divorce of a same sex couple, an underage couple, or a couple that was never lawfully married, in violation of the DOMA and the full faith and credit clause.

Respondent Ina Johnson fails to consider the difference between pleading a marriage and having a marriage. The decision in *Johnson* does not alter the language of the statute, but it does alter how the language is interpreted and applied. Now, a mere allegation of marriage is sufficient to invoke a Utah court's general jurisdiction to grant a divorce even if its later proved to be false or violate state and federal laws.

Article IV of the United States Constitution states "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." U.S. Const., Art. IV, Sec. 1. However, Congress adopted the DOMA, which states "No State ... of the United States ... shall be required to give effect to any ... judicial proceeding of any other State ... respecting a relationship between persons of the same sex that is treated as a marriage under the law of such other State...." 28 U.S.C. § 1738C.

The *Johnson* decision is at odds with both of the Constitution and a federal statute. As to federal law, a same-sex couple who obtains a divorce in Utah, and the divorce decree grants one party a portion of the other party's federal retirement benefits, then federal entitlement benefits are implicated by the decree. The same-sex marriage is dissolved, but both same-sex partners receive a portion of federal retirement benefits, in violation of federal law.

The Utah Supreme Court has found a loophole around the DOMA. The decision extends even farther because if one of the same-sex partners chooses to

domesticate the divorce decree in another state, that state is required to enforce the decree, even though the state does not recognize same-sex marriages. This result is contrary to DOMA, but required under the full faith and credit clause of Article IV. Thus, the *Johnson* decision puts the DOMA odds with the full faith and credit clause of the U.S. Constitution. The DOMA was designed to prevent such a result, but the Utah Supreme Court now allows for the opposite to occur. This decision implicates federal law and is an important federal question justifying certiorari.

Now, states that may not recognize a same-sex marriage will be required to recognize the divorce decree of a same-sex couple obtained in Utah and the rights thereby established. The fact a decree can be domesticated in any state, and must be recognized under the full faith and credit clause, requires every state to recognize the divorce of a same-sex couple. This holds true for the recognition of a same-sex marriage, a bigamous marriage, or an underage marriage. Other states are required to uphold and enforce divorce decrees when no marriage existed, in violation of their own laws governing marriage and divorce. Such an outcome implicates the Constitution and the laws of this country. Therefore, certiorari is appropriate to correct the errors of the Utah Supreme Court.

II. The Utah Supreme Court's ruling in *Johnson* impacts federal diversity jurisdiction.

Respondent Ina Johnson argues "[n]o state court decision could change the jurisdictional requirement

for a diversity action or invest the federal court with additional subject matter jurisdictional province." (*See* Brief in Opposition of Respondent, p. 21.) Again, Respondent fails to comprehend the breadth of the *Johnson* decision and its impact on subject matter jurisdiction.

Respondent correctly notes the Utah Supreme Court cannot change the jurisdictional requirement for diversity action. (*Id.*) The *Johnson* decision does not affect a diversity action nor is Petitioner arguing the decision has any effect on diversity requirements. Instead, the *Johnson* decision penetrates the heart of the domestic-relations exception, set forth in *Ankenbrandt v. Richards*, 504 U.S. 687 (1992). Respondent fails to acknowledge the *Johnson* decision allows a court applying Utah law, whether a state or federal court, to exercise subject-matter jurisdiction over a divorce proceeding, as long as it is a court of general jurisdiction. Specifically, the Utah Supreme Court stated:

> Just as a court adjudicating a contract dispute has the authority to determine that no contract exists without losing subject matter jurisdiction over the dispute, a court has the authority to adjudicate a divorce claim even if the court later determines that no marriage ever existed. We therefore overrule our holding in *Caffall* and hold that because courts of general jurisdiction have the authority to adjudicate divorces, we will not invalidate a divorce decree on the

> grounds that the 'right involved in the suit did not embrace the relief granted.'

Johnson, 2010 UT at ¶ 12 (*citing Perry v. McLaughlin*, 754 P.2d 679, 682 (Utah App. 1988)).

This holding broadly construes any court's jurisdiction over any domestic dispute. If a court of general jurisdiction can entertain an action in divorce, even if the parties were never married or the marriage is illegal or not recognized under Utah law, then that removes the pre-requisite of subject-matter jurisdiction and allows any court, state or federal, applying Utah law to entertain a divorce action. *See Johnson*, 2010 UT at ¶ 12. Thus, if subject matter jurisdiction is irrelevant to divorce actions, then federal courts applying Utah law can entertain divorce actions if the parties meet the requirements of 28 U.S.C. § 1332. The decision is contrary to *Ankerbrandt* and its progeny.

Further, the *Johnson* decision is contrary to the definition of subject-matter jurisdiction. This Court has set forth the requirements of subject matter jurisdiction, stating "[s]ubject matter jurisdiction defines the court's authority to hear a given type of case." *United States v. Morton*, 467 U.S. 822, 828 (1984). "It represents 'the extent to which a court can rule on the conduct of persons or the status of things.'" *Carlsbad Technology, Inc. v. HIF Bio, Inc.*, ___ U.S. ___, 129 S.Ct. 1862, *4 (2009) (*quoting* Black's Law Dictionary 870 (8th ed. 2004)). The *Johnson* decision clearly undermines the scope of subject matter jurisdiction, making it no longer a prerequisite to hear a case. By announcing its new rule that Utah courts

can grant a divorce even if no marriage existed, the Utah Supreme Court has eliminated the need for subject matter jurisdiction and replaced it with a rule that any court of general jurisdiction has the ability to grant a divorce, even if there was no marriage. Such a decision clearly contravenes this Court's clear direction on subject matter jurisdiction. Therefore, a grant of certiorari is appropriate to curtail this broad decision of the Utah Supreme Court.

III. Respondent Ina Johnson's characterization of Petitioner's alleged behavior is extraneous, inappropriate, and irrelevant to this Petition.

Respondent Ina Johnson repeatedly alleges Petitioner's behavior somehow bears on whether this Court should grant certiorari on this Petition. She repeatedly argues Petitioner has been held in contempt and has failed to make payments ordered under the decree. (*See* Brief in Opposition of Respondent, pp. 12-13.) Respondent only uses these tactics to distract from the important legal issue in the Petition: Whether the Utah Supreme Court's decision contravenes the DOMA and the U.S. Constitution and violates federal law relating to subject matter jurisdiction when it allows a court to grant a divorce when no legal marriage existed? This question is an important federal question and bears upon a state's right to govern its people when it encompasses federal law. Therefore, these arguments are not relevant, even if they were accurate.

Further, Respondent fails to acknowledge her conduct is by far worse than Petitioner's alleged conduct. Respondent filed for divorce, knowing that the parties were never married. (R. 0004; 1913, ¶ 2; 2097, ¶ 2; *see also Johnson*, 2010 UT 28.) Respondent was the accountant and handled the books for Petitioner's business, International Automated Systems ("IAS"), and lied about filing taxes for the business. (*See currently pending matter, International Automated System, Inc., v. Ina Bodell*, Third Judicial District Court of Salt Lake County, State of Utah, Civil No. 090912428.) Respondent further introduced destructive software codes intending to sabotage IAS' software for the U-Check system, and which did destroy the U-Check system. (*Id.*) Respondent further fails to admit she violated the terms of the decree, by taking more real property than she was awarded under the decree and selling the property before Petitioner realized the error and could receive a court order to stop the sale. (*Id.*) In effect, Respondent Ina Johnson's conduct began this string of litigation. That, however, is not before this Court. What is at issue is the need to clarify the important question of subject matter jurisdiction as applied by the Utah Supreme Court. Therefore, certiorari is necessary to clarify the scope of the *Johnson* decision.

CONCLUSION

Based on the foregoing, Petitioner, Neldon Johnson, respectfully requests this Court accept his Petition and grant Certiorari to review the issues affecting his rights.

Respectfully Submitted.

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